



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 23 2014

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Approval of Deviations from OECA Penalty Policies for Good Cause in
Regulatory Enforcement Cases

FROM: Cynthia Giles
Assistant Administrator *Cynthia Giles*

TO: Regional Counsel, Regions 1-10
Enforcement Directors, Regions 1-10
Office of Civil Enforcement Division Directors

The various redelegations of authority to settle enforcement cases typically provide that "Regional Officials must consult with the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) or his/her designee prior to exercising [a delegated settlement authority where] a proposed settlement would not comport with applicable penalty policies" ¹ Each media-specific penalty policy that is covered by these redelegated authorities contains provisions that allow for an adjustment of the gravity-based component of a penalty sought or to be obtained in settlement of an enforcement action. For example, the penalty policy applicable to stationary sources under the Clean Air Act provides a dollar-specific sliding scale by which a penalty may be adjusted upward or downward depending on the "sensitivity of environment" or the "length of violation," ² and the penalty policy for the Clean Water Act allows for up to a 10 percent reduction of the penalty "in recognition of a violator's cooperativeness." ³ In some instances, however, an appropriate penalty in settlement of a particular case may not fully comport with a specific provision in the applicable penalty policy. Thus, under each of the media-specific redelegations, as noted above, Regions are required first to consult with the OECA Assistant Administrator.

As a further action to increase the efficiency of Headquarters and Regional interactions, ⁴ and pursuant to the authority of the OECA Assistant Administrator to appoint a designee for the purpose of Headquarters consultation for penalty calculations that for good cause do not conform

¹ See, e.g., OECA Clean Water Act Redlegation 2-14-C, *Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions*, ¶3.c.ii.(1) (Mar. 5, 2013).

² William G. Rosenberg & Edward E. Reich, *Clean Air Act Stationary Source Penalty Policy* (Oct. 25, 1991), at 11-12.

³ *Interim Clean Water Act Settlement Penalty Policy* (March 1, 2005), at 13.

⁴ See Cynthia Giles, *Efforts to Improve the Efficiency of Regulatory Enforcement Cases* (March 5, 2013).

to the relevant penalty policy, I am designating the Director of the Office of Civil Enforcement to exercise this authority under each media-specific redelegation that so provides for this.⁵

Therefore, effective on the date of this memorandum, the Director of the Office of Civil Enforcement may exercise, as my designee, the consultation authority under the relevant media-specific redelegation for penalties in settlement that do not comport with the provisions of the applicable penalty policy. My expectation is that the Headquarters-Regional consultation at this level will be a more efficient use of resources and will still result in deviations from an applicable policy only for good cause and where supported by the facts of the case. However, consultation on a proposed penalty that would not recover the economic benefit of noncompliance from a violator remains with the OECA Assistant Administrator.

As provided in EPA's general "framework" penalty policy⁶ as well as the various media-specific penalty policies,⁷ the case file must contain a complete description of how the penalty was reached, including the basis and rationale where the penalty does not conform to the applicable penalty policy.

If you have any questions about this memorandum, please contact John Fogarty, OCE Associate Office Director, at 202/564-8865 or fogarty.johnpc@epa.gov.

⁵ These include, but are not limited to, the following: OECA Clean Water Act Redelegation 2-14-C, *Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions*, ¶3.c.ii.(1) (Mar. 5, 2013); OECA Federal Insecticide, Fungicide and Rodenticide Act Delegations Redelegation 5-17-C, *Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions*, ¶3.c.ii.(1) (Mar. 5, 2013); OECA Clean Air Act Redelegation 7-22-C, *Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions*, ¶3.c.ii.(1) (Mar. 5, 2013); OECA Resource Conservation and Recovery Act Redelegation 8-10-C, *Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions*, ¶3.d.ii.(1) (Mar. 5, 2013); OECA Safe Drinking Water Act Redelegation 9-16-C, *Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions*, ¶3.c.ii.(1) (Mar. 5, 2013); OECA Toxic Substances Control Act Redelegation 12-3-C, *Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions*, ¶3.c.ii.(1) (Mar. 5, 2013). This memorandum applies to all authorities redelegated to the Regions and administered by the Office of Civil Enforcement; it does not apply to those authorities delegated to and administered by the Office of Site Remediation Enforcement under Superfund, OPA and RCRA.

⁶ A Framework for Statute-Specific Approaches to Penalty Assessments (Feb. 16, 1984) (EPA General Enforcement Policy # GM-22), at 27 ("[T]o promote consistency, it is essential that each case file contain a complete description of how each penalty was developed.").

⁷ See, e.g., William G. Rosenberg & Edward E. Reich, Clean Air Act Stationary Source Penalty Policy (Oct. 25, 1991), at 31; FIFRA Enforcement Response Policy (Dec. 2009), at 24.